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BILL ANALYSIS

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Senate Bill 1257 (as introduced 4-17-08)
Senate Joint Resolution M (as introduced 4-17-08)
Sponsor: Senator Randy Richardville (S.B. 1257)
Senator Patricia L. Birkholz (S.J.R. M)
Committee: Natural Resources and Environmental Affairs

Date Completed: 4-30-08

CONTENT

Senate Joint Resolution M would amend the State Constitution to allow the Michigan Natural Resources Trust Fund Board to authorize the issuance of bonds and notes, payable from the allowable expenditures of the Trust Fund; and allow two-thirds, rather than one-third, of the Trust Fund revenue collected during a fiscal year (excluding interest and earnings) to be spent in subsequent fiscal years.

Senate Bill 1257 would amend Part 19 (Natural Resources Trust Fund) of the Natural Resources and Environmental Protection Act to create the Michigan Natural Resources Trust Fund Authority and prescribe its powers and duties, including the issuance of bonds and notes.

Senate Joint Resolution M would be submitted to the voters at a special election held on August 5, 2008.

Senate Bill 1257 is tie-barred to the joint resolution. The proposals are described below in further detail.

Senate Bill 1257

The bill would create the Michigan Natural Resources Trust Fund Authority as a body corporate within the Department of Natural Resources (DNR). The Authority would be administered under the DNR's supervision but would exercise its prescribed statutory power, duties, and functions independently

of the Department. The budgeting, procurement, and related functions of the Authority would have to be performed under the Department's direction and supervision. Authority funds would have to be handled in the manner and subject to the provisions of law applicable to State funds or in a manner specified in an Authority resolution authorizing the issuance of bonds or notes.

The Authority would be governed by the Natural Resources Trust Fund Board. Board members and Authority officers and employees would be subject to Public Act 317 of 1968 (which governs contracts of public servants with public entities). A member of the Board or an officer, employee, or agent of the Authority would have to discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a Board member or an Authority officer, employee, or agent, when acting in good faith, could rely upon the opinion of counsel for the Authority, upon the report of an independent appraiser selected with reasonable care by the Board, or upon financial statements of the Authority represented to the Board member or Authority officer, employee, or agent to be correct by the officer of the Authority having charge of its books or account, or stated in a written report by the Auditor General or a certified public accountant of the firm of the

accountants fairly to reflect the Authority's financial condition.

The Authority could employ legal and technical experts and other officers, agents, or employees, permanent or temporary, paid from Authority funds. The Authority would have to determine the qualifications, duties, and compensation of its employees, but an employee could not be paid a higher salary than the DNR Director. The Authority could delegate to one or more members, officers, agents, or employees any powers or duties it considered proper.

The Authority would have to contract with the DNR for the purpose of maintaining and improving the Authority's rights and interests.

The Authority annually would have to file a written report on its activities of the last year with the Legislature. The report would have to be submitted within 270 days following the end of the fiscal year. The report would have to specify the amount and source of revenue received, the status of investments made, and a description of the projects funded with proceeds of bonds sold under Part 19.

The Authority's accounts would be subject to annual audits by the State Auditor General or a certified public accountant appointed by the Auditor General. Authority records would have to be maintained according to generally accepted auditing principles.

Except as otherwise provided, the Board could do all things necessary or convenient to implement the purposes, objectives, and provisions of Part 19, and the purposes, objectives, and powers delegated to the Board by other laws or executive orders. These would include the power to do the following:

- Borrow money and issue negotiable revenue bonds and notes pursuant to Part 19.
- Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.
- With the prior consent of the DNR, solicit and accept gifts, grants, loans, and other aid from any person, or the Federal, State, or local government or any agency of the Federal, State, or local

government, or participate in any other way in a Federal, State, or local government program.

- Invest the Authority's money, at the Board's discretion, in instruments, obligations, securities, or property determined proper by the Board.
- Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice payable out of any money of the Authority, subject to the restrictions in Part 19.
- Indemnify and procure insurance indemnifying Board members from personal loss or accountability from liability asserted by a person on bonds or notes of the Authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the Authority.

The Authority could authorize and issue its bonds or notes payable solely from the revenue or funds available to it. Authority bonds and notes would not be a debt or liability of the State and would not create or constitute any indebtedness, liability, or obligations of the State or constitute a pledge of the faith and credit of the State. All Authority bonds and notes would be payable solely from revenue or funds pledged or available for their payment as authorized in Part 19.

All expenses incurred in carrying out Part 19 would have to be payable solely from revenue or funds provided or to be provided under Part 19. Part 19 would not authorize the Authority to incur any indebtedness or liability on behalf of or payable by the State.

Any revenue or funds available to the Authority that were not necessary to pay principal of or interest on any outstanding bonds or notes or not required to be deposited in a fund created to secure the bonds or notes or required to provide for the funding of any other matters required by a resolution authorizing the issuance of bonds or notes would have to be spent for the purposes of the Trust Fund. Any money derived from the proceeds of bonds or notes would have to be spent by the Authority in

the manner prescribed in Part 19 and the resolution authorizing the indebtedness.

The Authority could issue from time to time bonds or notes in principal amounts it considered necessary to provide funds for any purpose. The bonds or notes would not be a general obligation of the Authority but would be payable solely from the revenue or funds, or both, pledged to the payment of the principal of and interest on them as provided in the authorizing resolution.

The Authority's bonds or notes would have to be authorized by resolution of the Authority and bear the date or dates of issuance. They could be issued as either tax-exempt or taxable bonds or notes for Federal income tax purposes.

Bonds or notes could be sold at a public or private sale at the time, at the price, and at a discount as the Authority determined. Bonds and notes of the Authority would not be subject to the Revised Municipal Finance Act. A bond or note of the Authority would not have to be filed under the Uniform Securities Act.

The issuance of bonds and notes would be subject to the Agency Financing Reporting Act.

The Authority could authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, and any other transaction to provide security to assure timely payment of a bond or note.

The Authority could authorize payment from the proceeds of the notes or bonds, or other funds available, of the cost of issuance, including fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of notes or bonds.

Neither the members of the Board nor any person executing bonds or notes issued under Part 19 or any person executing any agreement on behalf of the Authority would be liable personally on the bonds or notes by reason of their issuance.

The Authority could purchase bonds or notes out of funds or money available for that purpose. The Authority could hold, cancel, or resell Authority bonds or notes subject to or in accordance with an agreement with holders of Authority bonds or notes.

Notwithstanding any restriction contained in any other law, the State and a public officer, local unit of government, or agency of the State or a local unit, a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business, an insurance company, insurance association, or other person carrying on an insurance business, or an executor, administrator, guardian, trustee, or other fiduciary, could legally invest funds belonging to them or within their control in bonds or notes, and Authority bonds or notes would have to be authorized security for public deposits.

Property of the Authority would be public property devoted to an essential public and governmental function and purpose. Income of the Authority would be considered to be for a public purpose. The Authority's property and income and operation would be exempt from all taxes and special assessments of the State or a political subdivision of the State. Bonds or notes issued by the Authority, and the interest on and income from them, would be exempt from all taxation of the State or a political subdivision.

The bill would require Part 19 to be construed liberally to effectuate the legislative intent and purposes as complete and independent authority for the performance of each and every act and thing authorized by Part 19. All powers granted would have to be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

The Authority could promulgate rules as necessary to implement Part 19.

Senate Joint Resolution M

Article IX, Section 35 of the State Constitution provides for the Michigan Natural Resources Trust Fund (described below, under **BACKGROUND**). The Trust Fund consists of all bonuses, rentals, delayed rentals, and royalties collected or

reserved by the State under provisions of leases for the extraction of nonrenewable resources from State-owned land, subject to certain exceptions. The Trust Fund may receive appropriations, money, or other things of value. Trust Fund assets must be invested as provided by law.

The interest and earnings of the Trust Fund must be spent for the acquisition of land or rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty, for the development of public recreation facilities, and for the administration of the Fund, which may include payments in lieu of taxes on State-owned land purchased through the Fund. Under the joint resolution, the administration of the Fund also could include the repayment of bonds and notes.

Currently, until the Trust Fund reaches an accumulated principal of \$500.0 million, the Legislature may provide, in addition to the authorized expenditure of interest and earnings, that up to one-third of the revenue from bonuses, rentals, delayed rentals, and royalties the Fund received during each State fiscal year may be spent during subsequent fiscal years for the specified purposes. The joint resolution would increase this amount to two-thirds of the revenue from those sources.

(Part 19 of the Natural Resources and Environmental Protection Act contains the same requirements for the expenditure of the interest and earnings of the Trust Fund, and the expenditure of additional money received by the Fund. Senate Bill 1257 would make the same changes to these provisions as proposed by the joint resolution.)

The joint resolution would allow the Trust Fund Board to authorize the issuance of bonds and notes for the specified purposes, payable from the allowable expenditures of the Fund.

If approved by two-thirds of the members elected to and serving in each house of the Legislature, the joint resolution would have to be submitted to the voters at a special election on August 5, 2008.

MCL 324.1901 & 324.1903

BACKGROUND

Under Article IX, Section 35 of the State Constitution, until the Trust Fund reaches an accumulated principal of \$500.0 million, \$10.0 million of the revenue from bonuses, rentals, delayed rentals, and royalties otherwise dedicated to it that are received by the State each fiscal year must be deposited into the Michigan State Parks Endowment Fund. Until then, however, in any fiscal year, not more than 50% of the total revenue must be deposited into the Endowment Fund.

The amount accumulated in the Trust Fund in any fiscal year may not exceed \$500.0 million, exclusive of interest and earnings and amounts authorized for expenditure. When the accumulated principal reaches \$500.0 million, all revenue that the Trust Fund would receive but for the limitation must be deposited into the Endowment Fund until the Endowment Fund reaches an accumulated principal of \$800.0 million. When the Endowment Fund reaches that accumulated principal, all revenue must be distributed as provided by law.

At least 25% of the total amounts made available for expenditure from the Trust Fund from any fiscal year must be spent for acquisition of land and rights in land, and at least 25% must be spent for development of public recreation facilities.

Article IX, Section 35 requires the Legislature to provide by law for the establishment of the Trust Fund Board within the DNR. The Board must recommend the projects to be funded by submitting its recommendations to the Governor, who must submit them to the Legislature in an appropriations bill.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The resolution and the bill would increase the total amount of annual revenue that could be spent from the Michigan Natural Resources Trust Fund (MNRTF) and expand the purposes for which the Fund may be used. Average annual revenue to the Fund is \$58.5 million, including interest and earnings. Currently, the interest and up to 33-1/3% of the revenue from bonuses, rentals, and royalties may be spent on land

acquisition, recreation development projects, and administration of the Fund. From the balance of 66-2/3% of the revenue, \$10.0 million is deposited into the State Park Endowment Fund. The remainder of the balance is deposited into the permanent investment (corpus) of the MNRTF. In fiscal year (FY) 2006-07, the total amount deposited into the permanent investment from the royalty revenue was \$18.7 million.

As of September 30, 2007, the permanent investment in the MNRTF was \$345.3 million. The cap on the permanent investment is \$500.0 million. Depending on the volume and value of extracted nonrenewable resources, the cap on the MNRTF may be reached in the next five to 10 years. At that time, the annual revenue will be redirected to the State Parks Endowment Fund and only the interest and earnings of the MNRTF will be spent.

The resolution and the bill would increase the amount of the annual revenue that may be spent from the Fund. Under the proposed changes, an additional \$14.3 million could have been spent from the MNRTF in FY 2006-07. The permanent investment of the MNRTF would continue to grow, but at a slower rate, taking longer to reach the cap.

The resolution and the bill would authorize the Michigan Natural Resources Trust Fund Authority to issue revenue bonds to support the same purposes that the MNRTF is currently used for and to use the Fund to repay the bonds. Any bonds or notes would not be a general obligation of the State. The cost to the MNRTF would depend on the amount of any bond or note, the interest rate, and term of the bond or note. The debt payments would be paid from the 66-2/3% of the revenue that could be spent under the proposal, not the portion designated for deposit into the permanent investment.

The bill also would authorize the Authority to hire consultants and temporary or permanent staff to support its operations. These costs would be considered administrative and paid by the MRNTF. For FY 2007-08, \$2.8 million is appropriated from the Fund to pay administrative costs for staff support and investment activities. These expenses could increase if the

Authority required legal counsel for the issuance of debt.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.